



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10-90; FCC 13-73]

Connect America Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) provides for a second round of Phase I funding to occur in 2013 and revises the rules for Phase I going forward to further leverage private investment in rural America and accelerate the availability of broadband to consumers who lack access.

DATES: Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, except for §§ 54.312(c)(4) through (c)(6), 54.312(c)(8), and 54.313(b), which contain new or modified information collection requirements that will not be effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the Federal Register announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: Ryan Yates, Wireline Competition Bureau, (202) 418-0886 or TTY: (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in WC Docket No. 10-90; FCC 13-73, adopted on May 21, 2013 and released on May 22, 2013. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW, Washington, DC 20554. Or at the following Internet address: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-73A1.pdf

I. INTRODUCTION

1. On November 18, 2011, the Commission released the USF/ICC Transformation Order, 76 FR 73830, November 29, 2011, which comprehensively reformed and modernized the high-cost universal service and intercarrier compensation systems. Recognizing, among other facts, that over 80 percent of the more than 18 million Americans who were unserved by broadband at that time lived in price cap territories, the Commission provided for two phases of funding to make broadband-capable networks available to as many unserved locations as possible in those areas. In Connect America Phase I, the Commission froze existing high-cost support for price cap carriers and provided up to \$300 million of additional, incremental support in 2012 in order to advance deployment of broadband-capable infrastructure pending implementation of Phase II subject to strict accountability and efficiency measures. Approximately \$115 million was accepted, which will deliver new broadband service to nearly 400,000 unserved Americans.

2. We now provide for a second round of Connect America Phase I incremental funding in 2013 to further leverage private investment in rural America and accelerate the availability of broadband to consumers who lack access. We allocate \$300 million for this second round. Price cap carriers will be able to accept support to extend broadband-capable networks under the rules for the first round of Phase I. In addition, they will have an opportunity to deploy into newly eligible areas that are unserved by broadband, so long as they comply with additional requirements discussed below. We also adopt a process to challenge the eligibility of particular census blocks, establish two different per-location support amounts based on the existing level of Internet access (\$550 for homes with low-speed Internet access and \$775, as in the first round, for homes with only dial-up access), and make certain other rule changes to encourage participation and ensure accountability and oversight. Especially in light of several major carriers' commitments to match new Connect America funding with an equal new investment of private capital, the additional funding we make available has the potential to expand broadband access to hundreds of thousands of additional, currently unserved Americans. We expect this to be the last round of Phase I funding, given the significant progress to date on Phase II implementation.

II. DISCUSSION

3. Overview. In this Order, the Commission provides for a second round of Phase I funding to occur in 2013 and revises the rules for Phase I going forward. We allocate a maximum of \$300 million for this second round of Phase I incremental support. Price cap carriers will be allocated funds through the same system used in the first round of Phase I. However, carriers will have the option to accept above their allocated support, so as to have an opportunity to receive additional funding if other carriers decline the support. Additionally, Phase I eligibility is expanded to any location currently unserved by Internet service with speeds of 3 Mbps downstream and 768 kbps upstream (3 Mbps/768 kbps) or higher, though a lower dollar amount of support is provided for locations that already have some level of Internet access. We adopt a process for challenges to the eligibility of specific areas where price cap carriers propose to extend broadband-capable infrastructure. We require information regarding Phase I elections to be public and for carriers to provide geocoded location information when making certifications regarding their buildout to facilitate the Commission's oversight.

4. Second Round of Connect America Phase I. While the Bureau has made significant progress in implementing Phase II of Connect America, we conclude that a second round of Phase I is an appropriate way to promote the rapid and efficient expansion of broadband-capable infrastructure to serve consumers lacking broadband that meets the Commission's definition. We therefore instruct the Bureau to provide a new round of Connect America Phase I incremental support for 2013.

5. The budget for the new round of Phase I is set at \$300 million. The Commission previously set the budget for an additional round of Phase I support in 2013 at \$300 million and provided the Bureau discretion to pro rate that amount if Phase II was implemented during 2013. We now conclude that \$300 million would be an appropriate amount for a second round of Phase I incremental support to be provided in 2013, given the remaining funding from 2012 and the progress of Phase II implementation. A \$300 million budget should provide a reasonable amount to accommodate potential demand for funding

that leverages private investment to accelerate deployment of broadband-capable infrastructure to consumers who can quickly be served in the near-term. As with the first round of Phase I, it is not our goal that all \$300 million will be accepted. Rather, we seek to use these funds now to spur rapid broadband deployment to “lower-cost areas where there is no private sector business case for deployment of broadband.” Any Phase I support that remain unclaimed at the end of the second round of support will be added to the budget for Phase II, pro-rated in equal annual amounts over the Phase II time period. This will have the effect of increasing the yearly budget for Phase II by an amount equal to one-fifth of the unclaimed funds.

6. Price cap carriers will be allocated Phase I incremental support using the same allocations as in the first round of Phase I. Carriers will have 75 days from the release of this Order to make their elections.

7. As with the first round of Phase I, each carrier may elect to receive all, none, or a portion of its allocated Phase I incremental support. However, in contrast to Phase I, a carrier may also elect to receive an amount above its allocated incremental support, up to the total budget of \$300 million for this second round of Phase I. To the extent other carriers decline to accept Phase I incremental support, any remaining funds will be redistributed to carriers that are willing to commit to additional deployment if they receive funding above their initial allocations. If the total demand of all carriers exceeds \$300 million, we authorize up to an additional \$185 million in funding. Under this approach, each carrier is assured of its allotted amount to expand broadband-capable infrastructure to unserved consumers, while at the same time providing additional funds to those carriers willing and able to expand to more Phase I eligible locations.

8. We delegate authority to the Bureau to set the specific deadlines, including the deadlines for any certifications, for a second round of Phase I support and to take other steps to implement a second

round, subject to the requirement that the amount of support offered does not exceed the total budget of \$300 million.

9. With the exception of the rules we explicitly change in this Order, all the rules and requirements from the first round of Phase I apply mutatis mutandis to the second round of Phase I.

10. Expanding Eligible Areas. To meet its Phase I service obligations, a carrier must deploy to locations unserved by broadband. Under the USF/ICC Transformation Order, however, only a subset of unserved locations was originally eligible for Phase I for support: specifically, only those locations that lacked Internet access service with speeds of at least 768 kbps/200 kbps (i.e. only dial-up Internet access). In the Phase I FNPRM, 77 FR 76435, December 28, 2012, the Commission sought comment on whether to expand eligibility to a larger pool of locations unserved by broadband meeting the Commission's 4 Mbps/1 Mbps standard.

11. In addition to areas lacking 768 kbps/200 kbps Internet access, we now expand eligibility for Phase I support to any location that lacks 3 Mbps/768 kbps Internet access. We do so in recognition that carriers evaluate the economics of extending fiber to an area on a project-by-project basis, with each project potentially containing some customers lacking 768 kbps/200 kbps, some lacking 1.5 Mbps/768 kbps, and others lacking 3 Mbps/768 kbps. By providing some support for those locations that lack 1.5 Mbps/768 kbps or 3 Mbps/768 kbps, carriers should find it more economical to extend fiber closer to those locations that only have dial-up Internet access. Thus, expanding eligibility to include locations with minimal non-dial-up Internet access, but without broadband, should also improve the economics of extending service to those customers who lack even 768 kbps/200 kbps Internet access. Moreover, upgrading the most distant locations to receive service meeting our 4 Mbps/1 Mbps standard should have the added benefit of providing many consumers currently lacking broadband with access to speeds in excess of our 4 Mbps/1 Mbps standard.

12. At the same time, we remain committed to prioritizing broadband-capable infrastructure to those areas that completely lack even 768 kbps/200 kbps Internet access. Therefore, we place certain strictures on carriers that seek to avail themselves of the opportunity to count towards their deployment obligation locations in the expanded areas of availability. First, price cap carriers must accept support for a second round of Phase I under the rules governing the first round, to the extent they are able to do so, before they may avail themselves of the expanded eligibility of areas adopted in this Order. Specifically, a carrier may not accept funding for locations already served by Internet access with speeds of 768 kbps/200 kbps unless the carrier has already accepted funding for all projects or routes including locations unserved by 768 kbps/200 kbps that can economically be built with \$775 in Connect America funding for each location unserved by 768 kbps/200 kbps plus an equal amount of non-Connect America carrier capital expenditure funding. For example, to the extent a carrier analyzed its network under the previous Phase I rules to identify projects to extend broadband-capable infrastructure to locations lacking 768 kbps/200 kbps service, and the identified projects would be economic to build with a one-to-one match of Connect America and carrier resources, the carrier must prioritize these projects when it accepts funding, and may not count toward satisfaction of its deployment obligation locations already served by Internet access with speeds of 768 kbps/200 kbps, regardless of the fact that some locations served by 768 kbps/200 kbps but not 3 Mbps/768 kbps will be reached through these identified projects.

13. Second, if a carrier has accepted funding for all projects or routes to locations unserved by 768/200 kbps that can be economically reached as noted in the preceding paragraph, it may also accept funding for routes to locations unserved by 3 Mbps/768 kbps that would count toward satisfaction of its deployment obligation. However, to the extent that carrier has multiple projects or routes for which it would be economic to extend service with a one-for-one match of Connect America funding, it must prioritize funded projects or routes so as to maximize the number of newly served locations that are currently unserved by Internet access with speeds of 768 kbps/200 kbps that will receive service as a result of Phase I funding. To accept new Phase I funding and count deployment to locations served by

768 kbps/200 kbps but unserved by 3 Mbps/768 kbps, carriers will be required to certify that they have met both conditions.

14. In conjunction with these rule changes, we adopt a different metric for the dollar amount of support for those locations lacking 3 Mbps/768 kbps, compared to the \$775 available for locations unserved by 768 kbps/200 kbps. We conclude that it is appropriate for carriers to be permitted to meet buildout obligations by deploying broadband-capable infrastructure to locations that have service of 768 kbps/200 kbps but not 3 Mbps/768 kbps for \$550 per location. Less fiber should be needed to upgrade the locations with some form of Internet access, as they are likely to be closer to the central office or remote terminal.

15. In addition to expanding eligible locations to any location lacking 3 Mbps/768 kbps Internet access, we also provide limited eligibility for locations shown on the current version of the National Broadband Map (data as of June 2012) as served by 3 Mbps/768 Internet access. A carrier may satisfy its Phase I obligations by deploying to certain locations in its own service territory that are shown on the National Broadband Map as being served by 3 Mbps/768 kbps where it is likely that such service is not in fact delivered, so long as no other provider is offering service at speeds of 3 Mbps/768 kbps to those locations. The carrier must identify those specific locations and certify that the locations are currently served from a copper-fed digital subscriber line access multiplexer (DSLAM) and are shown on the National Broadband Map as receiving speeds of 3 Mbps/768 kbps or less. It is likely that while locations served by a copper-fed DSLAM are shown as having an advertised speed of 3 Mbps/768 kbps, actual speeds to such locations fall below that. As noted in the record, copper-fed DSLAMs have a maximum of 12 Mbps of backhaul available; as consumers increasingly use bandwidth-intensive applications, such as streaming video, the aggregate demand for bandwidth of all users on a DSLAM exceeds the DSLAM's backhaul capacity, resulting in reduced speeds to the end user.

16. We will also limit support for any census block containing a project that received funding under the Broadband Initiatives Program (BIP) or the Broadband Technology Opportunities Program (BTOP), so long as the project meets the speed requirement that would disqualify the location from Phase I (i.e., the project will eventually provide speeds of 3 Mbps/768 kbps or greater). It would be an inefficient use of public funds to provide government support to two different projects aimed at serving the same location. If a carrier wishes to satisfy its Phase I deployment obligations by building in census blocks with BIP or BTOP projects, it must certify that it has engaged in due diligence and reviewed publicly available data sources to ensure that the particular locations it plans to serve do not and will not receive funding under BIP or BTOP for the construction of a network meeting our broadband standards. We direct the Bureau to work with the Universal Service Administrative Company (USAC), the National Telecommunications and Information Administration, and/or the Rural Utilities Service, as appropriate, to take steps necessary to ensure Phase I support is not provided to areas receiving BIP or BTOP support.

17. Also, in order to use Connect America funds in the most efficient manner possible and avoid providing excess support to an area, we direct the Bureau to ensure the funding is not provided to the same census blocks under both Phase I incremental support and Phase II. No carrier should be allowed to satisfy its Phase I obligations in any census block where it receives Phase II support. Carriers must be prepared to deploy to an equivalent number of locations that are unserved in a census block where they are not receiving Phase II support. If a carrier accepts Phase II support in a census block where it had initially planned to deploy broadband-capable networks to locations in order to meet its Phase I obligations, it must identify and deploy to the requisite number of locations in another census block for which it did not receive Phase II support.

18. Service Obligations. A carrier electing to receive second round Phase I support must deploy to a number of unserved locations. The number of locations varies depending on the speed of service currently available to that location. As noted above, deploying broadband-capable infrastructure to

an area lacking Internet access with speeds of 768 kbps/200 kbps will satisfy a greater portion of a carrier's public service obligation than deploying to areas with some level of non-broadband Internet access (i.e., a location that is served by Internet access at 768 kbps/200 kbps but not 4 Mbps/1 Mbps). Deploying to a location unserved by 768 kbps/200 kbps will satisfy \$775 of a carrier's Phase I obligations. Deploying to a location served by 768 kbps/200 kbps but unserved by 3 Mbps/768 kbps, as specified above, will satisfy \$550 of a carrier's Phase I obligation.

19. As in the first round of Phase I, when electing to accept support, the carrier must provide a list identifying the census blocks and wire centers in which it plans to use support. In addition, the carrier must specify how many \$775 locations and how many \$550 locations it will deploy to. The carrier must certify that that deployment funded through Phase I incremental support will occur in areas shown on the most current version of the National Broadband Map (data as of June 2012) as unserved by fixed Internet access with a minimum speed of 3 Mbps/768 kbps or that the carrier is challenging the National Broadband Map's designation, and that, to the best of the carrier's knowledge, the locations are, in fact, unserved by fixed Internet access with a minimum speed of 3 Mbps/768 kbps. The carrier must also certify that its current capital improvement plan did not already include plans to complete broadband deployment to that area within the next three years, and that Phase I incremental support will not be used to satisfy any merger commitment or similar regulatory obligations.

20. As a change from the first round of Phase I, and as described above, the carrier must additionally make the following certifications regarding locations that it seeks to count to satisfy Phase I deployment obligations. The carrier must certify to the best of its knowledge that no locations are the subject of funding under BIP or BTOP for projects that will provide Internet access with speeds of at least 3 Mbps/768 kbps. If a carrier seeks to count locations in its own service territory that are shown on the current version of the National Broadband Map (data as of June 2012) as served 3 Mbps/768 kbps, the carrier must certify that those locations are served through a copper-fed DSLAM. If the carrier seeks to

satisfy any of its obligations by deploying to locations served by 768 kbps/200 kbps but not 3 Mbps/768 kbps Internet service, it must certify that it has committed to all projects or routes to locations unserved by 768 kbps/200 kbps that can economically be built with \$775 in Connect America funds plus an equal amount of non-Connect America carrier capital expenditure funding, and that it has prioritized funded routes so as to maximize the number of newly served locations that are currently unserved by Internet access with speeds of 768 kbps/200 kbps.

21. The buildout obligations mirror those in the first round of Phase I. A carrier accepting Phase I support must complete deployment of broadband-capable infrastructure to two-thirds of the required number of locations within two years and must complete deployment to all required locations within three years. As a condition of this support, a carrier must offer broadband service to such locations of at least 4 Mbps downstream and 1 Mbps upstream, with latency sufficiently low to enable the use of real-time communications, including Voice over Internet Protocol, and with usage allowances, if any, associated with a specified price for a service offering that are reasonably comparable to comparable offerings in urban areas.

22. Phase I funding recipients will report that their networks meet the above standards through a process of self-certification. We note that the Wireline Competition Bureau, the Wireless Telecommunications Bureau, and Office of Engineering & Technology have not specified a methodology for testing the performance of a funding recipient's broadband-capable network. As Phase I incremental support is designed to provide one-time support for deployment to specific locations, we now conclude that the potential effort to implement a testing regime for Phase I incremental support recipients would exceed any marginal benefit that is gained as compared to self-certification. To the extent there are any issues with broadband performance, the consumer complaint process will help to inform the Commission of such instances.

23. Confidentiality. The Commission sought comment on whether Phase I elections should be afforded confidentiality. We now decide that Phase I elections in the second round should not be treated as confidential. We strongly encourage Phase I recipients to discuss their elections with Commission staff at least 15 days prior to the election deadline in order to ensure facial compliance with the filing requirements. While these discussions and documents related to them may be afforded confidentiality, the finalized elections must be filed publicly. Public disclosure is generally preferred, especially when the use of public funds is at issue. Furthermore, we find that the competitive harm to carriers from this disclosure is likely minimal. Indeed, not all carriers requested confidentiality for first round Phase I filings.

24. Challenge Process. In the Phase I FNPRM, the Commission proposed conducting a challenge process whereby parties could challenge the status of census blocks as shown on the National Broadband Map. We conclude that such a challenge process would improve the accuracy and efficacy of a second round of Phase I support, allowing support to be appropriately targeted to unserved areas consistent with our overarching goals for Phase I. Consistent with the guidance contained herein, we delegate to the Bureau authority to implement the challenge process.

25. Based on our review of the record, we are persuaded that the appropriate way to conduct a Phase I challenge process is to require price cap carriers first to identify the specific census blocks and wire centers where they propose to deploy broadband-capable infrastructure with second round Phase I support. This will reduce the burden on parties both making and responding to challenges, and the administrative burden of processing such challenges. The price cap carriers should identify where they intend to build based on the current version of the National Broadband Map (i.e., the map reflecting data as of June 2012).

26. In the first round of Phase I, several carriers initially sought to meet their Phase I deployment commitments in areas that were already served or failed to identify enough census blocks to

account for the required number of newly served locations. To ensure that carriers properly identify the blocks that will be subject to the challenge process, we strongly encourage those electing funding to submit their intended elections and planned buildout locations by census block to the Bureau on a confidential basis at least 15 days in advance of the acceptance deadline. The Bureau will evaluate the submissions to determine facial compliance with our requirements and will work with Phase I recipients to resolve any possible inconsistencies prior to the acceptance deadline. To the extent carriers do not avail themselves of this procedure, they run the risk of having their respective commitment amounts reduced, to the extent they fail to identify enough census blocks to account for the required number of new locations; carriers will not be permitted to amend their elections once the challenge process has commenced to add additional census blocks. Once the Bureau completes its review of the elections made on the deadline, it will publicly announce the acceptance amounts and census blocks for planned buildout. The challenge process then will be conducted, as described below.

27. When electing to receive second round Phase I support, price cap carriers must provide a list of census blocks unserved by 3 Mbps/768 kbps Internet access in which they intend to deploy to meet their buildout obligations. In submitting such a list, price cap carriers may argue no providers in the area are offering broadband, challenging the National Broadband Map's designation of a census block as being served by 3 Mbps/768 kbps Internet access or as being served by 768 kbps/200 kbps Internet access. When making an election to accept Phase I support, a price cap carrier may condition all or a portion of its acceptance on its challenge being granted. To eliminate the incentive to make blanket challenges in areas where the carrier has little intent to serve, however, if a carrier challenges the designation of a census block as served on the National Broadband Map and that challenge is ultimately granted, it will be obligated to deploy in that particular census block, absent extraordinary circumstances beyond its control.

28. Following the price cap carriers' initial submissions identifying where they intend to serve and which census blocks they are challenging the National Broadband Map classification as served,

the Bureau will publish a list of all census blocks that carriers propose to serve to meet their Phase I obligations. Interested parties will have 30 days to challenge this list by demonstrating that the block is in fact served by fixed Internet access with speeds of 3 Mbps/768 kbps or higher. Carriers will then be given an additional 30 days to respond to these challenges. To the extent a more recent National Broadband Map becomes available in this time period, interested parties are free to bring new information regarding availability as shown on the map to the Bureau's attention.

29. All filings in the challenge process, whether from a price cap carrier or another provider, must be supported by some form of documented evidence. The Bureau should not consider conclusory assertions without supporting evidence that a census block's designation as served or unserved should be changed. In cases where another provider contests the price cap carrier's intention to serve, the Bureau may consider such evidence as a signed certification from an officer of the provider under penalty of perjury that it offers 3 Mbps/768 kbps Internet service to customers in that particular census block. Such a certification could be accompanied by current customer billing records, appropriately redacted to preserve customer privacy. In cases where the price cap carrier seeks to contest the classification of a census block on the map as served by broadband, the Bureau may consider such evidence as statements from residents of an area noting that they have attempted and failed to receive service from a putative unsubsidized competitor. The Bureau may also consider FCC Form 477 data in evaluating whether a provider is providing broadband in a particular census block. Where the Bureau finds it more likely than not that the status of a census block should be treated differently than the status shown on the National Broadband Map, the Bureau will deem that census block as served or unserved, as appropriate, for the purposes of Connect America Phase I.

30. Reporting Requirements. We adopt our two proposals regarding the reporting requirements for Phase I of Connect America. These changes apply both to support already accepted in the first round of Phase I and support that will be accepted in the second round of Phase I. We also adopt

measures to ensure greater transparency for the public about how Phase I funds are being used, in response to a commenter's suggestions.

31. First, in their two- and three-year milestone certifications, recipients of Phase I support must provide geocoded latitude and longitude location information, along with census block and wire center information, for each location the carrier intends to count toward its deployment requirement. As recipients should know by that point in time to which locations they are deploying in order to satisfy their buildout requirements, it is unlikely this additional reporting requirement will substantially burden Phase I recipients. While the additional burden will be minimal, requiring geocoded location information will considerably improve the Commission's ability to ensure accountability of Phase I funds. We direct the Bureau to work with USAC to publish a map indicating the location of projects funded with Phase I incremental support.

32. Second, in the event a recipient intends to deploy to areas other than those identified in its initial acceptance, it is permitted (but not required) to make a supplemental filing providing updated deployment plans at any time. Compliance with the deployment requirements will be determined based on the recipient's final deployment certification. As this interim reporting is completely optional, it should not unnecessarily burden any recipient that decides to file such reports.

33. In addition, we require carriers that elect to take Phase I funding under these revised rules to report annually on the dollar amount of investment they have made in the prior calendar year, using Phase I incremental support, beginning with the annual report due July 1, 2015. In their annual reports required under section 54.313, recipients should provide the total amount of capital funding expended in the previous year in meeting Connect America Phase I deployment obligations, accompanied by a list of census blocks indicating where funding was spent.

34. Alternative Proposals. We are not persuaded by arguments we should make more fundamental changes to Phase I. The Commission is implementing a multi-faceted strategy to expand the

availability of broadband, both fixed and mobile, throughout the nation. We decline at this time to revisit the relative allocation of funding among the various programs designed to achieve our broadband objectives for the nation. Phase I was limited to price cap carriers in order to address a specific issue: over 80 percent of unserved Americans live in price cap territories. The most direct and expedient way to address that issue is to provide a discrete amount of support to price cap carriers that will leverage their private capital in exchange for a clearly defined obligation to deploy to those unserved locations in the near term. A second round of Phase I can be quickly implemented in the months ahead. In contrast, other proposals, such as developing an auction by which to distribute Phase I funds, would take longer to implement. Thus, Phase I as refined today is a reasonable step forward in achieving our goal of rapidly deploying broadband-capable infrastructure to unserved Americans living in price cap territories.

III. PROCEDURAL MATTERS

A. Paperwork Reduction Act

35. This document contains modified information collection requirements subject to the PRA. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

36. In this present document, we have assessed the effects of requiring carriers to submit new elections for the second round of Connect America Phase I support, as well as requiring geocoded location information for all Phase I certifications, and find that it will not impact businesses with fewer than 25 employees. Only price cap carriers or rate-of-return carriers affiliated with price cap carriers are eligible for Phase I support. All such entities have more than 25 employees.

B. Final Regulatory Flexibility Certification

37. The Regulatory Flexibility Act (RFA) requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities.” The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

38. This document modifies and clarifies the Phase I rules adopted by the Commission in USF/ICC Transformation Order. These modifications and clarifications do not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to USF/ICC Transformation Order. Therefore, we certify that the requirements adopted in this Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order, including a copy of this final certification, in a report to Congress pursuant to SBREFA. In addition, the Report and Order and this certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.

C. Congressional Review Act

39. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

IV. ORDERING CLAUSES

40. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(i), 4(j), 5, 201(b), 214, 218-220, and 254 of the Communications Act of 1934, as amended, and section 706

of the Telecommunications Act of 1996, 47 U.S.C. 151, 154(i), 154(j), 155, 201(b), 214, 218-220, 254, 1302, that this Report and Order IS ADOPTED, effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], except for §§ 54.312(c)(4) through (c)(6), 54.312(c)(8), and 54.313(b), which contain new or modified information collection requirements that will not be effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the Federal Register announcing the effective date for those sections.

41. IT IS FURTHER ORDERED that authority to implement a Connect America Phase I challenge process IS DELEGATED to the Wireline Competition Bureau, consistent with paragraphs 24-29 of this Report and Order.

42. IT IS FURTHER ORDERED that authority to set the timeline for a second round of Phase I support, including certifications related to the second round of Connect America Phase I, IS DELEGATED to the Wireline Competition Bureau.

43. IT IS FURTHER ORDERED that part 54 of the Commission's rules, 47 CFR part 54, is AMENDED as set forth below, and such rule amendments shall be effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], except for §§ 54.312(c)(4) through (c)(6), 54.312(c)(8), and 54.313(b), which contain new or modified information collection requirements that will not be effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the Federal Register announcing the effective date for those sections.

44. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

45. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications common carriers, Reporting and record keeping requirements, Telecommunications, Telephone.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene H. Dortch,
Secretary.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 is revised to read as follows:

Authority: Sections 1, 4(i), 5, 201, 205, 214, 219, 220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and section 706 of the Communications Act of 1996, as amended; 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

2. Amend § 54.312 by revising paragraph (b) introductory text and adding paragraph (c) to read as follows:

§ 54.312 Connect America Fund in Price Cap Territories – Phase I.

* * * * *

(b) *Incremental Support in 2012.* From January 1, 2012, to December 31, 2012, support in addition to baseline support defined in paragraph (a) of this section will be available for certain price cap local exchange carriers and rate-of-return carriers affiliated with price cap local exchange carriers as follows.

* * * * *

(c) *Incremental Support in 2013.* From January 1, 2013, to December 31, 2013, support in addition to baseline support defined in paragraph (a) of this section will be available for certain price cap local exchange carriers and rate-of-return carriers affiliated with price cap local exchange carriers as follows:

(1) For each carrier for which the Wireline Competition Bureau determines that it has appropriate data or for which it determines that it can make reasonable estimates, the Bureau will determine an average per-location cost for each wire center using a simplified cost-estimation function derived from the Commission's high-cost proxy model. Incremental support will be based on the wire centers for which the estimated per-location cost exceeds the funding threshold. The funding

threshold will be determined by calculating which funding threshold would allocate all available incremental support, if each carrier that would be offered incremental support were to accept it.

(2) An eligible telecommunications carrier accepting incremental support must deploy broadband to a number of unserved locations, shown as unserved by fixed Internet access with speeds of at least 768 kbps downstream and 200 kbps upstream on the then-current version of the National Broadband Map, equal to the amount of incremental support it accepts divided by \$775.

(3) An eligible telecommunications carrier must accept funding pursuant to paragraph (c)(2) of this section before it may accept funding pursuant to paragraph (c)(3) of this section. If an eligible telecommunications carrier has committed to deploy to all locations eligible for support under paragraph (c)(2) of this section on routes or projects that can economically be built with \$775 in Connect America funding for each location unserved by 768 kbps downstream and 200 kbps upstream plus an equal amount of non-Connect America carrier capital expenditure funding, but the carrier has not fully utilized its allotted funding, it may also count towards its deployment obligation locations shown as unserved by fixed Internet access with speeds of at least 3 Mbps downstream and 768 kbps upstream equal to the amount of remaining incremental support divided by \$550.

(4) A carrier may elect to accept or decline incremental support. A holding company may do so on a holding-company basis on behalf of its operating companies that are eligible telecommunications carriers, whose eligibility for incremental support, for these purposes, shall be considered on an aggregated

basis. A carrier must provide notice to the Commission, the Administrator, relevant state commissions, and any affected Tribal government, stating the amount of incremental support it wishes to accept, the number of locations at the \$775 amount, the number of locations at the \$550 amount, and identifying the areas by wire center and census block in which the designated eligible telecommunications carrier will deploy broadband to meet its deployment obligation, or stating that it declines incremental support. Such notification must be made within 75 days of being notified of any incremental support for which it would be eligible.

(5) Along with its notification, an eligible telecommunications carrier accepting incremental support must submit the following certifications:

(i) The locations to be served to satisfy the deployment obligation are not shown as served by fixed broadband at the speeds specified in paragraph (c)(2) or (c)(3) of this section provided by any entity other than the certifying entity or its affiliate on the then-current version of the National Broadband Map or that it is challenging the National Broadband Map's designation of that census block under the challenge process in paragraph (c)(7) of this section;

(ii) To the best of the carrier's knowledge, the locations are, in fact, unserved by fixed Internet access with speeds of at least 3 Mbps downstream and 768 kbps upstream, or 768 kbps downstream and 200 kbps upstream, as appropriate;

(iii) The carrier's current capital improvement plan did not already include plans to complete broadband deployment within the next three years to the locations to be counted to satisfy the deployment obligation;

(iv) Incremental support will not be used to satisfy any merger commitment or similar regulatory obligation; and

(v) The carrier has undertaken due diligence to determine the locations in question are not within the service area of either Broadband Initiatives Program or the Broadband Technology Opportunities Program projects that will provide Internet access with speeds of at least 3 Mbps downstream and 768 upstream.

(6) An eligible telecommunications carrier deploying to locations unserved by 3 Mbps downstream and 768 kbps upstream under paragraph (c)(3) of this section must also certify that it has prioritized its planned projects or routes so as to maximize the deployment of broadband-capable infrastructure to locations lacking Internet access with speeds of 768 kbps downstream and 200 kbps upstream.

(7) A person may challenge the designation of a census block as served or unserved by a certain speed as shown on the National Broadband Map. When the Wireline Competition Bureau determines that the evidence presented makes it more likely than not that the census block should be designated as served by broadband with speeds of at least 3 Mbps downstream and 768 kbps upstream, that locations in that census block will be treated as served by broadband and therefore ineligible to be counted for the purposes of paragraph (c)(3) of this section. When the Wireline Competition Bureau determines that the evidence

presented makes it more likely than not that the census block should be designated as served by Internet service with speeds of 768 kbps downstream and 200 kbps upstream, but unserved by broadband with speeds of at least 3 Mbps downstream and 768 kbps upstream, locations in that census block will be treated as served by Internet access with speeds of 768 kbps downstream and 200 kbps upstream and therefore eligible to be counted for the purposes of paragraph (c)(3) of this section. When the Wireline Competition Bureau determines that the evidence presented makes it more likely than not that the census block should be designated as unserved by Internet service with speeds of 768 kbps downstream and 200 kbps upstream, locations in that census block will be treated as unserved by Internet access with speeds of 768 kbps downstream and 200 kbps upstream and therefore eligible to be counted for the purposes of paragraph (c)(2) of this section.

(8) If no entity other than the carrier or its affiliate provides Internet service with speeds of 3 Mbps downstream and 768 kbps upstream or greater as shown on the National Broadband Map or as determined by the process described in paragraph (c)(7), the carrier may satisfy its deployment obligations at a location shown by the National Broadband Map as being served by that carrier or its affiliate with such service by certifying that it is the only entity providing such service, that the location does not actually receive speeds of 3 Mbps downstream and 768 kbps upstream, and the location is served through a copper-fed digital subscriber line access multiplexer. The carrier must specifically identify such locations in its election. Such locations will be treated the same as locations under paragraph (c)(3) of this section.

(9) An eligible telecommunications carrier must complete deployment of broadband-capable infrastructure to two-thirds of the required number of

locations within two years of providing notification of acceptance of funding, and must complete deployment to all required locations within three years. To satisfy its deployment obligation, the eligible telecommunications carrier must offer broadband service to such locations of at least 4 Mbps downstream and 1 Mbps upstream, with latency sufficiently low to enable the use of real-time communications, including Voice over Internet Protocol, and with usage allowances, if any, associated with a specified price for a service offering that are reasonably comparable to comparable offerings in urban areas.

3. Amend § 54.313 by revising paragraph (b) to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

* * * * *

(b) In addition to the information and certifications in paragraph (a) of this section:

(1) Any recipient of incremental Connect America Phase I support pursuant to § 54.312(b) and (c) shall provide:

(i) In its next annual report due after two years after filing a notice of acceptance of funding pursuant to § 54.312(b) and (c), a certification that the company has deployed to no fewer than two-thirds of the required number of locations; and

(ii) In its next annual report due after three years after filing a notice of acceptance of funding pursuant to § 54.312(b) and (c), a certification that the company has deployed to all required locations and that it is offering broadband service of at least 4 Mbps downstream and 1 Mbps upstream, with latency sufficiently low to enable the use of real-time communications, including Voice over Internet Protocol, and with usage

allowances, if any, associated with a specified price for a service offering that are reasonably comparable to comparable offerings in urban areas.

(2) In addition to the information and certifications required in paragraph (b)(1) of this section, any recipient of incremental Connect America Phase I support pursuant to § 54.312(c) shall provide:

(i) In its annual reports due after one, two, and three years after filing a notice of acceptance of funding pursuant to § 54.312(c), a certification that, to the best of the recipient's knowledge, the locations in question are not receiving support under the Broadband Initiatives Program or the Broadband Technology Opportunities Program for projects that will provide broadband with speeds of at least 4 Mbps/1 Mbps; and

(ii) In its annual reports due after one, two, and three years after filing a notice of acceptance of funding pursuant to § 54.312(c), a statement of the total amount of capital funding expended in the previous year in meeting Connect America Phase I deployment obligations, accompanied by a list of census blocks indicating where funding was spent.

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